

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
LARRY RICK MIKAWA,)
Defendant.)
No. 10-0102-01-CR-W-DW

ORDER

This matter is before the Court on Magistrate Judge John T. Maughmer's Report and Recommendation finding Defendant not competent to stand trial (Doc. 21).

A three-part scheme for determining mental competency to stand trial exists under 18 U.S.C. § 4241. A district court must first determine, by a preponderance of the evidence, whether the defendant suffers from a “mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” 18 U.S.C. § 4241(a), (d). If the district court concludes that the defendant lacks sufficient mental competency to proceed to trial, “the court shall commit the defendant to the custody of the Attorney General” and the “Attorney General shall hospitalize the defendant for treatment . . . for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed.” 18 U.S.C. § 4241(d), (d)(1).

On April 20, 2010, the Court ordered a judicial determination of mental competency. Thereafter, Defendant was examined by Dr. Jeremiah Dwyer. Dr. Dwyer concluded that the defendant is incompetent to understand the nature and consequence of the proceedings against

him and to assist properly in his defense. During a hearing before Magistrate Judge Maughmer, Defendant and the Government stipulated to Dr. Dwyer's findings. After the hearing, Magistrate Judge Maughmer prepared a Report and Recommendation finding Defendant incompetent to stand trial. After an independent review of the record, the Court adopts the Magistrate's finding of facts and conclusions of law.

It is hereby ORDERED that

- (1) the Magistrate's Report and Recommendation be attached to and made part of this Order;
- (2) Defendant Larry Rick Mikawa is incompetent to stand trial;
- (3) Defendant Mikawa shall be committed to the custody of the Attorney General.

Pursuant to 18 U.S.C. §§ 4241(d)(1), the Attorney General shall hospitalize Webb for treatment in a suitable facility for a reasonable period of time, not to exceed four months, to determine whether there is a substantial possibility that in the foreseeable future Mikawa will attain the capacity to permit the trial to proceed.

Date: September 24, 2010

/s/ Dean Whipple

Dean Whipple
United States District Judge